

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

File No.

City of Long Lake,

CASE TYPE:

Plaintiff,

v.

**DECLARATION OF CHRISTOPHER
H. YETKA**

City of Orono,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Christopher H. Yetka, declare as follows:

1. I am an attorney for Plaintiff City of Long Lake ("Long Lake"). I have personal knowledge of the facts contained herein and am competent to testify to them.

2. On April 25, 2023, I sent a letter to Orono Mayor Dennis Walsh and Orono City Council providing notice that certain actions by Orono constitute breach of the Agreement and Contract for Fire Protection (the "Contract"). The letter states that if Orono continues any future actions that will adversely affect Long Lake's ability to perform under the Contract, Long Lake will institute legal action to compel Orono's performance pursuant to the Contract. Attached as **Exhibit A** is an accurate copy of the April 25, 2023 letter to Orono Mayor Dennis Walsh and Orono City Council.

3. On May 8, 2023, I received a letter from Soren Mattick, the Orono City Attorney. Mr. Mattick's letter confirmed that he received my letter dated April 25, 2023, and states that he would discuss the letter with his client as part of the May 22, 2023 Orono city council meeting.

He also stated he would respond if appropriate. Attached as **Exhibit B** is an accurate copy of the May 22, 2023 letter from Soren Mattick.

4. On May 17, 2023, I sent Orono Mayor Dennis Walsh and Orono City Council a second letter in connection with Orono's Fire Needs Assessment reflecting further breaches of the Contract and clear anticipatory breach. Attached as **Exhibit C** is an accurate copy of the May 22, 2023 letter from Soren Mattick.

5. As of this date, I have not received a response from the City of Orono or Mr. Mattick regarding the content of these letters or Orono's breaches of the Contract.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Executed on June 23, 2023 in Hennepin County, Minnesota.

By: /s/ Christopher H. Yetka
Christopher H. Yetka

EXHIBIT A

**Larkin Hoffman**

8300 Norman Center Drive
Suite 1000
Minneapolis, Minnesota 55437-1060

GENERAL: 952-835-3800
FAX: 952-896-3333
WEB: www.larkinhoffman.com

April 25, 2023

Mayor Dennis Walsh and Orono City Council
City of Orono
2750 Kelley Parkway
Orono, MN 55356

VIA U.S. MAIL AND EMAIL
(aedwards@ci.orono.mn.us)

Re: Orono's Breach of the Agreement and Contract for Fire Protection with the City of Long Lake

Dear Mayor Walsh and Orono City Council:

I have been retained by the City of Long Lake ("Long Lake") to pursue all remedies stemming from Orono's breach of the October 15, 2002 Agreement and Contract for Fire Protection, as amended ("Fire Service Agreement" or "Agreement"). The City of Orono's recent actions are a clear breach of the Fire Service Agreement, an anticipatory repudiation of the Agreement, and a violation of the implied covenant of good faith and fair dealing that is contained in every contract. To date, Orono's actions have caused the City of Long Lake damages, and if they continue, could affect the quality of fire services provided by Long Lake. If Orono does not immediately refrain from interference with Long Lake's duties in furnishing all firefighting services to Orono, Long Lake, Medina and Minnetonka Beach, Long Lake will be forced to bring an immediate action, and seek any and all monetary and equitable relief, including injunctive relief if appropriate.

The Agreement's term extends to December 31, 2025. Orono has sent letters expressing their intent to terminate their participation in the Agreement at that time. However, in the interim, Orono has acted in a manner that is in breach of the Agreement. First, despite being under contract with Long Lake for the next two years and eight months, in December 2022, Orono hired Long Lake's fire chief. This action was a breach of the Agreement because the Agreement specifically states that the Fire Chief of Long Lake shall have the sole and exclusive right and responsibility to prescribe the manner and method of giving an alarm for fire within the fire service area. Orono has no need for a fire chief before January 1, 2026.

Second, by using the knowledge and resources of the Long Lake Fire Department, Orono purchased a ladder truck that Long Lake was considering. Again, these actions were in direct breach of the Agreement's provisions that Long Lake is to furnish all firefighting services, rescue/medical services, and related fire protection services to Orono for the Total Fire Services Area. Because Long Lake is providing Orono's fire services, purchasing the ladder truck was a violation of the Agreement.

Mayor Dennis Walsh and Orono City Council
April 25, 2023
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Third, Orono has approached the state Legislature regarding moving the present Fireman's Relief Association funding from the City of Long Lake to Orono. Under the express terms of the Agreement, the City of Long Lake is to assume all obligations with regard to the Firemen's Relief Association. This is a further breach of the Agreement.

Fourth, Orono has stated it will refuse to approve future Capital Budgets or future shared purchases under the current contract.

Each of these actions taken individually are a breach of the Agreement. However, as a whole, they are clear evidence of a repudiation of the Agreement, anticipatory ongoing breach of the Agreement before it expires in December 2025, and a violation of the covenant of good faith and fair dealing that is implied in every contract. There can be no reasonable explanation for Orono hiring a fire chief and purchasing a ladder truck three years before the expiration of the Agreement, or approaching the Minnesota Legislature about moving the Fireman's Relief Association over two and a half years before the expiration of the Agreement.

Long Lake's primary goal is to provide continued outstanding fire services to its member cities. With that in mind, Long Lake has had ongoing discussions with Orono on proposals to resolve this conflict. Long Lake will continue to work in good faith to the extent that it appears the goal of those discussions is a workable fire department that will service not only Orono and Long Lake, but Medina and Minnetonka Beach as well. However, should Orono continue with any future actions that will adversely affect Long Lake's ability to perform under the Agreement, it will immediately institute an action against Orono to compel Orono's performance under the Agreement, and to recover any and all damages available to it. By this letter, Long Lake expressly reserves, and does not waive, any of its rights under the Agreement and the Law.

Sincerely,



Christopher H. Yetka, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: 952-896-3308
Email: cyetka@larkinhoffman.com

EXHIBIT B



CAMPBELL KNUTSON

PROFESSIONAL ♦ ASSOCIATION

May 8, 2023

Elliott B. Knetsch
Joel J. Jamnik
Andrea McDowell Poehler
Soren M. Mattick
David S. Kendall
Jared D. Shepherd
Henry A. Schaeffer, III
Alina Schwartz
James J. Mongé, III
Jerome M. Porter
Leah C.M. Koch
Meagan K. Kelley
Benjamin J. Colburn
Cara A. McDonald
Jack S. Brooksbank
Cole A. Birkeland

Thomas J. Campbell*
Roger N. Knutson*
*Retired

Christopher H. Yetka
Larkin Hoffman Daly & Lindgren Ltd.
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437

RE: **Letter to City of Orono dated April 25, 2023**

Dear Mr. Yetka:

My name is Soren Mattick, and I serve the City of Orono as its City Attorney. I have been provided with a copy of a letter you sent the City on behalf of the City of Long Lake, dated April 25, 2023. My office is working with my client to review this letter. It is the City's intention to comply with all its obligations under the 2002 Contract for Fire Protection. To ensure that the City can address any potential concerns, and given the potential threat of legal action and subsequent need for attorney-client privileged discussion, I will be discussing the letter with my client at a closed session as part of the May 22, 2023 regular City Council Meeting. I will provide further responses as needed after that discussion.

If you have any further immediate questions, feel free to contact me at (651) 234-6217.

Very truly yours,

CAMPBELL KNUTSON, P.A.

Soren M. Mattick
Orono City Attorney

SMM/jmo

Cc: Adam Edwards, City Administrator

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EXHIBIT C

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May 17, 2023

Mayor Dennis Walsh and Orono City Council
City of Orono
2750 Kelley Parkway
Orono, MN 55356

VIA U.S. MAIL AND EMAIL
(aedwards@ci.orono.mn.us)

Re: Orono's Breach of the Agreement and Contract for Fire Protection with the City of Long Lake

Dear Mayor Walsh and Orono City Council:

This correspondence follows my letter of April 25, 2023 pointing out a number of breaches by Orono of its Contract for Fire Protection with the City of Long Lake. On May 8, 2023, Orono published an Orono Fire Needs Assessment that evidences further breach, and anticipatory breach of the Agreement.

Attached to this letter is the December 12, 2011 Addendum to Contract for Fire Protection that was signed by Orono's then Mayor, Lili McMillan and its City Administrator, Jessica Loftus. In that Addendum Fire Station No. 2 in Navarre was included in the overall Agreement, and it is clear that Long Lake has responsibility to "oversee all activities and operations at Fire Station No. 2." (Paragraph 1). Additionally, "Long Lake will be responsible for operating and maintaining the fire station . . ." (Paragraph 2). "The Cities agree that Paragraph #8 of the Existing Fire Protection Agreement includes responsibility for managing the operation of Fire Station No. 2." (Paragraph 5).

Despite this clear language, and the fact that the Fire Protection Agreement extends through December 31, 2025, Orono's Needs Assessment has a number of affirmative assertions that are in direct conflict with the existing Agreement. First and foremost, in Annex D, at pages 70 and 71, there are references to "Assume Control of Navarre Station" in the June/July 2024 timeframe, along with "Remodel Fire Station 1" and "Remodel Fire Station 2" in the July 2024 to November 2025 timeframe. Again, the existing Agreements make clear that Long Lake is responsible for operating and maintaining these stations through December 2025. Under "Recommendations for 2024", the Assessment states: "State Fire Marshall (sic) – The Fire Chief will contact the State fire (sic) Marshall's (sic) office to do an inspection of Station 2 for the purpose of obtaining a fire department identification number." Again, Station No. 2 is under the operation and maintenance of the Long Lake Fire Department. Additionally, Orono is well aware that Long Lake entered into a fire services agreement with Minnetonka Beach based upon the proximity of Station No. 2. Any attempts at restricting Long Lake's access or use of that station would constitute, at the very least, tortious interference with contract. Should Orono take

Mayor Dennis Walsh and Orono City Council

May 17, 2023

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any affirmative steps to assume control of either Station No. 1 or Station No. 2 prior to the expiration of the operative Agreements, Long Lake will immediately institute legal proceedings and seek all available remedies, including injunctive relief.

Other provisions in the Needs Assessment strengthen the concerns expressed in our earlier letter. Under “Recommendations for 2023”, the Assessment states: “The City of Orono will have to have special legislation written and passed to facilitate the move (sic) the firefighter’s pensions from Long Lake to Orono Relief Association.” (Paragraph 7.1.1(1)). Furthermore, paragraph 7.1.4(6) of the Assessment states: “Orono should start to engage Minnetonka Beach in conversation for the Orono Fire Department to cover the City of Minnetonka Beach, which has been covered by the Long Lake Fire Department.” Under “Recommendations for 2024”, the Assessment further states “Orono should start to engage Medina in conversation for the Orono Fire Department to cover the small area of Medina which has been covered by the Long Lake Fire Department. . . .” These two statements are a clear indication of Orono’s tortious intent to interfere with existing contracts, and are illegal on their face.

Given the contents of Orono’s Needs Assessment published after my previous letter was sent, it is clear that Orono continues to breach the Fire Protection Agreement, and intends to breach it in additional ways and interfere with Long Lake’s existing contracts. Long Lake stands ready to vigorously defend its legal and contractual rights, and in so doing protect the residents of Orono, Long Lake, Medina and Minnetonka Beach. As always, Long Lake is willing to collaborate toward sustainable, forward-thinking fire services in our communities and its welcomes a response to the counter-proposal that was sent to Orono in January 2023.

Sincerely,



Christopher H. Yetka, for
Larkin Hoffman Daly & Lindgren Ltd.

Encl.

Direct Dial: 952-896-3308

Email: cyetka@larkinhoffman.com

c: (w/encl): Soren Mattick, Esq.
City of Long Lake

ADDENDUM TO CONTRACT FOR FIRE PROTECTION

THIS CONTRACT is made and entered into this 12th day of December, 2011 between the **CITY OF LONG LAKE**, Hennepin County, Minnesota, and the **CITY OF ORONO**, Hennepin County, Minnesota (herein collectively the "Cities").

WHEREAS, the Cities previously entered into an "Agreement and Contract for Fire Protection" dated October 15, 2002 (hereinafter the "Fire Protection Agreement") attached hereto as Exhibit "A"; and

WHEREAS, the Cities also previously entered into a "Contract for Joint Ownership" of a new fire station located at 340 Willow Drive, Orono, Minnesota (hereinafter the "Long Lake Fire Station") attached hereto as Exhibit "B"; and

WHEREAS, the Contract for Joint Ownership provides that at the time of completion of construction of the Long Lake Fire Station that Long Lake will be responsible for operating and maintaining the fire station, and that the costs incurred by Long Lake for operating and maintaining the fire station building along with the costs associated with the operation of the services provided from the fire station would be reimbursed to Long Lake as part of an amended Fire Protection Agreement using the same cost-sharing formula as is currently in place; and

WHEREAS, The Long Lake Fire Station has been built and is operational; and

WHEREAS, The Long Lake Fire Department is now providing fire services to the Navarre area of Orono; and

WHEREAS, The Long Lake Fire Station #2 has now been built in Navarre, and is operational; and

WHEREAS, the Cities desire to add an addendum to the existing Fire Protection Agreement to reflect the provision of fire services to the Navarre area of Orono, and the operational costs related to Fire Station No.2.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth the Cities do hereby agree as follows:

1. FIRE STATION No. 2 OPERATIONS. Long Lake agrees to oversee all activities and operations at Fire Station No. 2 under the same terms and conditions as previously agreed to in the existing Fire Protection Agreement. All references in the existing Fire Protection Agreement to the Long Lake Fire Station shall be extended to include Fire Station No. 2.

2. COSTS AND EXPENSES. Long Lake will be responsible for operating and maintaining the fire station, and the costs incurred by Long Lake for operating and maintaining the fire station building along with the costs associated with the operation of the services

provided from the fire station will be reimbursed to Long Lake as part of an amended Fire Protection Agreement using the same cost-sharing formula as is currently in place.

3. **DEFINITIONS.** The Cities agree that "City Fire Service Areas" and the "Total Fire Services Areas" have changed to include the Navarre area of Orono, as indicated on the attached map.

4. **SERVICES TO BE RENDERED.** The Cities agree that Paragraph #2 of the existing Fire Protection Agreement is intended to include and cover the services and operations related to the Navarre area of Orono, and Fire Station No. 2.

5. **LONG LAKE OPERATIONAL RESPONSIBILITY.** The Cities agree that Paragraph #8 of the Existing Fire Protection Agreement includes responsibility for managing the operation of Fire Station No. 2.

6. **STATE FIRE AID ALLOCATION AGREEMENT (2% insurance).** The Fire State Aid allocation agreement has been amended to allocate the State Aid related to the Navarre area to the City of Long Lake.

APPROVED by the Cities of Long Lake and Orono on the date first above written.

CITY OF LONG LAKE

BY: 

Its Mayor

AND 

Its City Administrator

12/07/11

CITY OF ORONO

BY: 

Its Mayor

AND 

Its City Administrator